

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into
Implementation of Public Utilities Code § 390.
(U 39-E)

Rulemaking 99-11-022
(Filed November 18, 1999)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
JOINT RULING PROVIDING OPPORTUNITY
TO RECEIVE ADDITIONAL COMMENTS**

Summary

This joint Assigned Commissioner and Administrative Law Judge's ruling provides parties with an opportunity to further develop the record by submitting additional comments on information relevant to the determination of short run avoided cost (SRAC) prices and market electric prices, and thus address the matter remanded to the Commission by the California Court of Appeal (The Court) in *Cal.App.4th* in this proceeding.

Procedural Background

The draft decision of Commissioner Peevey (Draft Decision) in this proceeding was mailed on February 15, 2005. In accordance with Article 19 of the Commission's Rules of Practice and Procedure, parties were given an opportunity to file comments on the Draft Decision. Joint comments, and reply comments, from Pacific Gas and Electric Company, Southern California Edison Company, The Utility Reform Network, and the Office of Ratepayer Advocates (PG&E Parties), and from the California Cogeneration Council, The Independent Energy Producers Association, The Cogeneration Association of California and

The Energy Producers and Users Coalition (QF Parties) were received on March 21 and 28, respectively.

Discussion

Parties' comments indicate that information developed in the record and relied upon in the Draft Decision may be inadequate for purposes of determining whether SRAC prices between December 2000 and March 2001 (the Remand Period) thereby complete the remand ordered by the Court.¹ As argued by PG&E Parties, Table E of the Draft Decision improperly considers electric market prices and posted SRAC prices over one, two and three years, with the Remand Period at the *end* of each time period. PG&E Parties contend that this table should be revised to consider market electric prices, and posted SRAC prices over one, two and three years with the Remand Period at the *beginning* of each time period.² This proposed revision, using Mitigated Market Clearing Prices, and Day Ahead North of Path 15, and South of Path 15 prices, would lead to different conclusions than the Draft Decision. Alternatively, QF Parties argue in Reply Comments that using similar data as proposed by the PG&E Parties, but different time periods, would affirm the Draft Decision's conclusion that SRAC prices were less than market electric prices.³ Furthermore, in its February 17, 2004 Additional Comments, the California Cogeneration Council had submitted a similar table based on periods beginning April 1998, 1999 and 2000 through

¹ We interpret the Court's use of the term "correct" to mean that SRAC prices comply with PURPA requirements.

² March 21, 2005 Comments of PG&E Parties, pp. 12-13.

³ March 28 2005 QF Parties Reply Comments, p. 4.

March, 2001 which concluded that SRAC prices were less than electricity spot market prices for each of these periods. In an effort to resolve these contradictory conclusions, we have determined that additional information comparing SRAC prices and market electric prices is necessary to supplement the record.

Specifically, we have determined that information examining SRAC prices in comparison to market electric prices prior to and after the Remand Period may help resolve the remand issue. In order to account for any seasonal variances, we are requesting information in 12-month increments, as discussed below. Therefore, parties are given an opportunity to provide further evidence through comments and reply comments, addressing SRAC prices and market electric prices during the following periods:

1. SRAC prices and market electric prices for the period beginning four months prior to the Remand Period, and ending four months after the Remand Period (i.e., August 2000 through July 2001).
2. SRAC prices and market electric prices for the period beginning 10 months prior to the Remand Period, and ending 10 months after the Remand Period (i.e., February 2000 through January 2002).
3. SRAC prices and market electric prices for any other period that any party feels is the appropriate timeframe for consideration. This proposed time period, however, must include the Remand Period in the middle of the chosen period and provide for seasonal variances.

Parties' comments providing this information shall include justification for the use of any particular period, sufficient workpapers detailing the calculations of SRAC prices and market electric prices which will allow other parties to

recreate the calculations, and justification for the use of any proxies representing market electric prices.

In addition, any party arguing that SRAC prices for the Remand Period exceed avoided costs must include adequate calculations showing the assumptions, derivations and other inputs used to derive the amount overpaid.

Need for Evidentiary Hearings

At the prehearing conference held on November 7, 2003, all parties agreed that evidentiary hearings were not necessary. Thus the record in the instant rulemaking has been developed using the notice and comment procedure (via opening and reply comments). It is our intent that the proceeding should continue using this procedure. However, if any party now believes that an evidentiary hearing is required to address the additional information requested in this ruling, it must in its opening comments:

1. Request an evidentiary hearing;
2. Identify the material factual issues in dispute that require an evidentiary hearing;
3. Identify the nature of the testimony it would introduce at an evidentiary hearing; and,
4. Explain why an evidentiary hearing is required, with citation to any relevant legal authority.

Schedule for Opening Comments and Reply Comments

We have considered that portions of the requested information have already been developed by parties, and therefore we are establishing the following schedule for the receipt of comments and reply comments on the issues identified above:

May 9, 2005 – Parties serve opening comments

May 16, 2005 - Parties serve reply comments

Therefore, **IT IS RULED** that:

1. Parties may submit opening comments and reply comments as described above.
2. Opening Comments shall be submitted by May 9, 2005.
3. Reply Comments shall be submitted by May 16, 2005.
4. Any requests for evidentiary hearings shall be as described above, and shall be included in opening comments.

Dated April 26, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

/s/ BRUCE DEBERRY

Bruce DeBerry
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner and Administrative Law Judge's Joint Ruling Providing Opportunity to Receive Additional Comments on all parties of record in this proceeding or their attorneys of record.

Dated April 26, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.